



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 20, 1998

Ms. Dianne Eagleton  
Supervisor, Records Division  
North Richland Hills Police Department  
P.O. Box 820609  
North Richland Hills, Texas 76182-0609

OR98-1272

Dear Ms. Eagleton:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 115942.

You indicate that this request for an open records decision from this office is a "second [r]equest to withhold information on ID#113255." ID# 113255 involved the city's request for an open records decision on the release of a particular offense report. In Open Records Letter No. 98-0621 (1998), this office ruled that, absent a demonstration that compelling reasons exist to withhold the information, the city must release to the requestor the requested report. You now state that the city has withheld the report from the requestor based on section 552.108 of the Government Code, as the information relates to cases under active investigation.

We once again conclude that the city must release the requested report. This is so because in two ways the city has failed to follow the act's procedural guidelines, thereby resulting in the presumption that the requested information is public.

First, the city has failed to raise section 552.108 within the ten-day deadline for raising discretionary exceptions such as section 552.108 that protect the interests of a governmental body as opposed to the interests of a third party. Gov't Code § 552.301(a). Thus, the information is presumed to be public pursuant to section 552.302 of the Government Code. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

Second, pursuant to section 552.303(c) of the Government Code, on April 9, 1998, our office notified you by letter sent via facsimile that you had failed to submit to this office a copy of the written request for information as required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e), failure to comply would result in the legal presumption that the requested information is public information. Although you submitted additional copies of the requested information, you did not timely provide our office with the information that was requested in our April 9, 1998 notice to you. Therefore, as provided by section 552.303(e), the information that is the subject of this request for information is again presumed to be public information. Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not shown compelling reasons why the information at issue should not be released. Therefore, the information is presumed to be public and must be released.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/rho

Ref.: ID# 115942

Enclosures: Submitted documents

cc: Mr. Kent Douglas Lambertson  
2628 Wedgemont Circle North  
Fort Worth, Texas 76133  
(w/o enclosures)